

ORIGINAL

FILED
HARRISBURG, PA

JUL 24 2000

MARY E. D'ANDREA, CLERK
Per
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

GAIL GALLOWAY

Plaintiff

v.

PENNSYLVANIA BOARD OF
PROBATION AND PAROLE, *et al.*,

Defendants

No. 1:00-CV-00649

Judge Rambo

MJ Smyser

MOTION TO DISMISS FILED ON BEHALF
OF DEFENDANT CHARLES B. GIORNESTO

Defendant Charles B. Giornesto, by his attorneys, moves the Court to dismiss him from this action on grounds that:

1. To the extent this action seeks damages against Mr. Giornesto in his official capacity he is immune from damages by reason of the Eleventh Amendment to the U.S. Constitution.
2. The claim against Mr. Giornesto, although couched in terms of a conspiracy, is really a claim that Mr. Giornesto lied about information supplied to him by others. Plaintiff lacks standing to assert a due process claim for confiscation of the weapons he alleges were owned by his son and his interest to be at liberty on parole was

extinguished with due process.


3. The search of plaintiff's property did not violate plaintiff's Fourth Amendment rights.
4. Plaintiff has not obtained a favorable decision concerning his challenge to the parole revocation proceedings. Therefore plaintiff's claim under § 1983 is not cognizable.

Wherefore, the Court should dismiss Charles B. Giornesto as a defendant.

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

BY:


FRANCIS R. FILIPI
Senior Deputy Attorney General
Attorney ID# 18630

SUSAN J. FORNEY
Chief Deputy Attorney General
Chief, Litigation Section

Counsel for Defendants Pennsylvania
Board of Probation And Parole, Joseph
Smith, Daniel Roberts, George Johnson,
Charles B. Giornesto, Arthur Thomas, K.
Scott Roy, Thomas Ridge, William Ward,
Sharon Burks, Seth Mendelsohn, Fred
Jacobs, Neil Mechling and James Morgan

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DATE: July 24, 2000

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CERTIFICATE OF CONCURRENCE/NONCONCURRENCE

I, FRANCIS R. FILIPI, hereby certify that concurrence in the Motion to Dismiss Filed on Behalf of Defendant Charles B. Giornesto was sought from plaintiff and counsel for Hon. William Caldwell and for District Attorney Robert B. Stewart, III. Neither plaintiff nor counsel for District Attorney Robert B. Stewart, III was available. Counsel for Hon. William Caldwell concurs in this motion. From previous conversations concerning the motion to dismiss filed on behalf of the majority of defendants, counsel assumes that counsel for District Attorney Robert B. Stewart, III, will concur in said motion and that plaintiff will not concur. The undersigned will supplement the record once responses have been obtained from plaintiff and counsel.


FRANCIS R. FILIPI

DATED: July 24, 2000

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CERTIFICATE OF SERVICE

I, FRANCIS R. FILIPI, Senior Deputy Attorney General, hereby certify that on this date I caused to be served copies of the foregoing Motion to Dismiss Filed on Behalf of Defendant Charles B. Giornesto, by depositing a copy in the United States Mail, postage prepaid, first class, in Harrisburg, PA, addressed to each of the following:

Gail Galloway
R.D. #1, Box 30
Petersburg, PA 16669

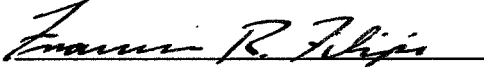
Plaintiff

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Counsel for District Attorney Robert B. Stewart, III


FRANCIS R. FILIPI
Senior Deputy Attorney General

DATED: July 24, 2000